Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of Joint Application by BellSouth Corporation, BellSouth Telecommunications Inc., and BellSouth Long Distance, Inc. for Provision of In-Region, InterLATA Services In Georgia and Louisiana	)	CC Docket No. 02-35

OPPOSITION COMMENTS OF KMC TELECOM, INC.

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SUMMARY

BellSouth once again has failed to demonstrate compliance with several sections of the competitive checklist and, as this Commission wisely concluded just three months ago, is hindering expansion of local competition in Georgia and Louisiana. KMC and other CLECs continue to suffer from unsatisfactory performance in many significant areas, including inadequate OSS and discriminatory access to unbundled loops.

KMC's commercial experience reveals that BellSouth's ordering processes do not function properly. In response to valid orders, BellSouth returns confirmations that lack a BellSouth order number – without which a CLEC cannot communicate with BellSouth service centers. In other instances, BellSouth will improperly reject service orders on the basis of an alleged "invalid circuit ID," despite the fact that KMC uses BellSouth's own COSMOS system to check the ID prior to order submission.

BellSouth's loop performance is even more troublesome, as it fails to meet confirmed loop installation appointments in a satisfactory manner, missing as many as 25% of its appointments for unbundled loops. BellSouth clearly engages in discriminatory loop assignment, as demonstrated by its own reported performance in several key performance measure categories. Using a relatively new tactic, BellSouth is also using its newfound dominance of the DSL market to block competitor access to loops.

Loop outages are also a chief concern, as outages occur right after loop installs and conversions. Repeat outages on the same circuit are also far too commonplace. These concerns are borne out by BellSouth's performance numbers.

In addition to BellSouth's failure to comply with these specific checklist items, BellSouth has consistently engaged in anticompetitive and unlawful behavior. This activity

includes use of proprietary information for BellSouth's own "Winback" efforts, as well as false and misleading representations to KMC customers. Due to BellSouth's clear lack of compliance with the competitive checklist and its anticompetitive tactics, the Commission must deny BellSouth's application to enter the interLATA market in Georgia and Louisiana.

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OPPOSITION COMMENTS OF KMC TELECOM, INC.

KMC Telecom, Inc. ("KMC") by its attorneys, hereby submits these comments in opposition to the Joint Application of BellSouth Corporation, BellSouth Telecommunications, Inc., and BellSouth Long Distance, Inc., (collectively "BellSouth") for authority to provide in-region, interLATA services in the States of Georgia and Louisiana, pursuant to section 271 of the Communications Act of 1934, as amended.[1] KMC incorporates by reference the comments and affidavits it submitted in CC Docket 01-277, in response to the application BellSouth later withdrew.

KMC is a facilities-based Competitive Local Exchange Carrier ("CLEC") competing in Georgia, Louisiana, and in many other states across the country. KMC and its

[1] 47 U.S.C. § 271. *See Comments Requested on the Joint Application by BellSouth Corporation for Authorization Under Section 271 of the Communications Act to Provide In-*

. . . .*Continued*

affiliates are building high-speed, high-capacity advanced fiber optic networks to provide various services to business customers, including local and long distance voice and data services. KMC is currently providing service in eight of the nine BellSouth monopoly states, including Augusta and Savannah, Georgia, and Baton Rouge, Louisiana.[2] KMC, however, has just recently sold its properties in the cities of Shreveport and Monroe. In order to compete, KMC must purchase loops from BellSouth to connect end users with its network.

I. BELLSOUTH HAS NOT DEMONSTRATED COMPLIANCE WITH THE SECTION 271 COMPETITIVE CHECKLIST

BellSouth has failed to demonstrate compliance with several sections of the competitive checklist[3] and is hindering local competition throughout its region. KMC has suffered through numerous BellSouth obstacles in attempting to compete both in Georgia and Louisiana as well as in six of the remaining BellSouth monopoly states.

KMC has endured unsatisfactory performance in many areas, relating specifically to the following section 271(c)(2)(B) checklist items:

(ii) – nondiscriminatory access to network elements (particularly OSS);

(iv) – access to unbundled loops (DS-0 and DS-1);

(vii) – access to 911 and E911 services;

Region, InterLATA Services in the States of Georgia and Louisiana, Public Notice, CC Docket No. 02-35, DA 02-377 (2002).

2 Attached to the Opposition Comments of KMC Telecom, Inc. filed in CC Docket 01-277 (*KMC GA/LA I Comments*), was an affidavit of John D. McLaughlin, Jr., Director, State Government Affairs for KMC, and, as Attachment Two, as well as affidavits from the following KMC City Directors that were filed in the respective State proceedings: Chuck Weiss – Augusta, GA; Kathryn Johnson - Savannah, GA; Randy Braddock - Monroe, LA; Richard Demint - Shreveport, LA; and Gregory Chiasson - Baton Rouge, LA.

3 47 U.S.C. § 271(c)(2)(B).

(viii) – white page directory listings; and

(xi) – number portability.[4]

In addition to BellSouth's failure to comply with the competitive checklist items, BellSouth has continued to engage in anticompetitive behavior. Such activities include using proprietary information obtained from KMC for the purpose of BellSouth's own "Winback" efforts, making false and misleading statements to KMC customers, and engaging in illegal promotions.

Due to BellSouth's clear lack of compliance with the competitive checklist and anticompetitive tactics, the Commission must deny BellSouth's application. BellSouth's own self-reported performance data alone compels a finding of checklist non-compliance. There is simply no way for the Commission to find that BellSouth is eligible for interLATA entry in Georgia and Louisiana.

II. KMC'S COMMERCIAL EXPERIENCE DEMONSTRATES THAT BELLSOUTH IS FAILING TO PROVIDE ADEQUATE ACCESS TO ITS OSS

The Commission has previously determined that the best form of checklist proof is actual commercial experience. In light of the weaknesses inherent in the third party test in Georgia, that determination applies with particular force here.

KMC's commercial experience reveals that BellSouth's ordering processes do not function properly. In its zeal to return firm order confirmations (FOCs) within the timeframes established in its service quality measurement plan (SQM), BellSouth sends incomplete confirmations. Not only are the confirmations unreliable in that BellSouth does not adequately

[4] To avoid repetition, KMC will incorporate its prior comments by reference as they relate to checklist items vii and viii, and will not repeat those concerns herein.

check for facilities prior to issuance, but also they often fail to include the BellSouth order number. Without the BellSouth-established order number, a CLEC cannot communicate with the various BellSouth service centers during the processing of the order. Thus, for example, if the KMC field office needs to communicate with the BellSouth LCSC to coordinate a hot cut, it will be unable to do so since the service centers coordinate all activity based solely on the order number.[5]

In other instances, BellSouth will not even accept a valid service order, and will instead improperly reject orders on the basis of an alleged "invalid circuit ID." These orders clearly are rejected in error, since KMC uses BellSouth's own COSMOS system to check the circuit ID prior to order submission.[6] As a result of these improper rejections, BellSouth, for example, fails to properly disconnect loops when requested by KMC.[7] BellSouth frequently will take weeks to accomplish the actual disconnect and to release the facility for re-use by KMC or others.[8]

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5 Attachment One: Affidavit of John D. McLaughlin, Jr., at page 7 ("*McLaughlin Affidavit*").

6 *McLaughlin Affidavit* at page 8.

7 *See* Attachment Two to *KMC GA/LA I Comments* (Braddock Affidavit, para. 9; Demint Affidavit, para. 4; Chiasson Affidavit, para. 3).

8 KMC estimates that, in Georgia, between twenty and thirty percent of the facilities underlying loop disconnect orders remain unavailable thirty days later. *See* Attachment Two to *KMC GA/LA I Comments*: Weiss Affidavit, para. 11. In Louisiana, BellSouth has worked some disconnect orders prematurely, resulting in customer outages, and has delayed working others for weeks. *See* Attachment Two to *KMC GA/LA I Comments*: Chaisson Affidavit, para. 4; Braddock Affidavit, para. 5.

III. BELLSOUTH IS NOT PROVIDING ACCESS TO LOOPS AND SATISFACTORY NUMBER PORTABILITY IN ACCORDANCE WITH THE 271 CHECKLIST

The Commission has required that a Regional Bell Operating Company's ("RBOC's") loop performance afford competitors a "meaningful opportunity to compete,"[9] and that number portability be accomplished "without impairment of quality, reliability, or convenience."[10] As demonstrated herein, by the comments filed in response to BellSouth's now withdrawn application,[11] and most importantly by the performance data itself, BellSouth's loop performance fails these standards in both Georgia and Louisiana. BellSouth's unsatisfactory performance includes discriminatory loop assignment procedures, poor provisioning performance, substandard hot cut coordination, and horrible maintenance and repair.

In addition to BellSouth's poor performance, with respect to both DS1 and DS0 circuits, BellSouth also is now *actively* blocking access to customers. By instituting a policy with no possibly valid basis, BellSouth assigns DSL service to the primary line of multi-line customers and marks other customer accounts with DSL USOCs. In light of its "policy" to not provide DSL service to end users who receive voice service from CLECs, this effectively prevents huge numbers of customers from receiving the benefits of competition. Making matters

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9 *Application by Bell Atlantic New York for Authorization Under Section 271 of the Communications Act to Provide In-Region, InterLATA Service in the State of New York*, Memorandum Opinion and Order, 15 FCC Rcd 3952, 4098, para. 279 (1999) ("*New York 271 Order*"); *Application by SBC Communications Inc., Southwestern Bell Telephone Company, and Southwestern Bell Communications Services, Inc. d/b/a Southwestern Bell Long Distance Pursuant To Section 271 Of The Telecommunications Act Of 1996 To Provide In-Region, InterLATA Services In Texas*, Memorandum Opinion and Order, 15 FCC Rcd 18354, para. 251 (2000) ("*Texas 271 Order*").

10 *Id.* at para. 367 (citing 47 U.S.C. § 153(30)).

11 CC Docket 01-277.

even worse, BellSouth discriminates in favor of its affiliated entities in the recognition of authority to submit orders on a customer's behalf. BellSouth's performance and deliberate actions deprive KMC and other competitors of any meaningful opportunity to compete.

A. BellSouth Frequently Misses Firm Appointments for Loops.

BellSouth's own most recent data indicate that it missed over ten percent of the basic two-wire analog loop installs for KMC in Georgia over the eight month period ending in January, 2002.[12] In fact, BellSouth's worst performance during that period was just three months ago, in December 2001, when it missed 26% of KMC's analog loop orders with LNP.

Unfortunately, BellSouth's horrible performance is not limited to Georgia. In Louisiana, BellSouth missed 25% and 17% of the Digital Loop installs for KMC in January, 2002 (below DS1 and DS1 and above, respectively).[13]

As noted in KMC's earlier comments, BellSouth had sought to defend its unacceptable performance by stating that it missed even more installation appointments for its retail customers.[14] The fact that BellSouth's performance is even worse for retail customers should result in an inquiry into its retail operations, and certainly provides no basis upon which to grant a 271 application. For parity to be used as an appropriate benchmark, there must be some semblance of adequate retail performance. Barring such performance, an absolute standard must be used to supplement or replace the parity measure in order to ensure that competitors have a meaningful opportunity to compete.

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12 *McLaughlin Affidavit* at page 5.

13 *Id.*

14 *KMC GA/LA I Comments*.

One component of this poor installation performance, and a source of significant delay when customers attempt to switch to KMC, is the apparent lack of available facilities.[15] In such cases, BellSouth designates the order as "held, pending facility" and sends the competitor a notice that the order is in jeopardy of not being completed. The BellSouth numbers reveal the magnitude of the problem. This is not parity:

Percent Jeopardies, Digital Loop >= DS-1[16]

	CLECs	BellSouth
January:	43%	3%
December:	66%	4%

The problem with the lack of facility designation is threefold. First, there is the delay in switching the customer to KMC. Second, there is the manner in which BellSouth confirms that facilities do or do not exist. Finally, there are serious questions about the veracity of the claims that facilities are unavailable.

With respect to the first problem, this can cause a dissatisfied customer, and results in lost revenue to the CLEC. The manner in which BellSouth fails to verify the existence of facilities should be of even greater concern to the Commission. The procedures that BellSouth has in place are simply insufficient to provide an accurate and reliable order confirmation since they fail to verify the existence of adequate facilities at the appropriate time.

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15 *See, e.g., KMC GA/LA I Comments,* Attachment Two: Braddock Affidavit at para. 3; Demint Affidavit at para. 2; Chiasson Affidavit at para. 1.

16 *See* BellSouth Monthly State Summary, Metric B.2.5.19, % Jeopardies – Mechanized.

Upon receipt of a CLEC order, BellSouth conducts a cursory check of its records, confirms the order and ***then,*** just prior to the install, verifies that the necessary facilities exist.[17]

In many instances, BellSouth records will indicate that a satisfactory circuit exists, only to be proven incorrect when the time comes to turn up that circuit.[18] That is, technicians frequently find a "record discrepancy" or "defective facility" only when they arrive to install service – either of which will in all likelihood prevent an order from being provisioned as scheduled.[19] This leads to a delayed install and provides inadequate notice to both the CLEC and the end user that the change in service providers will not take place as scheduled.

Despite its awareness that the install date it provides in the order confirmation is often meaningless, BellSouth still fails to verify that it has actual, working circuits available to complete the order until the install date arrives. The discovery that a facility assigned to a competitor is defective, for example, would be "on the due date" when the technician "got to the site."[20]

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[17] In the North Carolina proceeding, BellSouth witness Ainsworth readily admitted that "we do not do the pre-FOC check." NCUC Tr. Vol. 7, at 241. The relevant NCUC transcript pages are attached as Attachment Two.

[18] In other instances, BellSouth indicated that no facilities were available, only to be proven wrong when the customer, facing a delay in service, contacted BellSouth and KMC then discovered that facilities did in fact exist (*KMC GA/LA I Comments,* Attachment Two: Braddock Affidavit at para. 3).

[19] NCUC Tr. Vol. 7, at 243 (Ainsworth). Although Mr. Ainsworth stated that technicians "should" attempt to locate a spare facility and "should" test for adequacy, he claimed a lack of knowledge when asked whether the technicians are actually undertaking those activities. *Id.* At Mr. Ainsworth's suggestion, BellSouth witness Heartley was asked what proof he had that technicians were following the proper practices in North Carolina, but was able to provide none. NCUC Tr. Vol. 8, at 283-88.

[20] NCUC Tr. Vol. 7, at 248 (Ainsworth).

Although BellSouth attempts to justify the failure to meet its install commitments by claiming that retail customers suffer the same fate,[21] there is no equivalent to a FOC on the retail side.[22] In addition, BellSouth has no data indicating the frequency with which it advises its retail customers that facilities are not available due to either a problem with the record or the facility.[23]

While the BellSouth hot cut coordination process is not good, it is made worse when technicians do not follow prescribed procedures – procedures that are critical when a live customer is being converted. Until BellSouth moves to a single ("C") order, competition will be seriously impaired and BellSouth cannot meet the checklist.

As noted in comments on the prior application, BellSouth admitted that it had not investigated whether its technicians were following the prescribed procedures, that compliance may vary by region and can affect new installs, hot cuts and repair performance, and that BellSouth is not even aware of the corrective measures undertaken by fellow RBOCs to ensure compliance with checklist Item Four.[24] In its instant application, BellSouth has failed to adduce appropriate evidence on any of these subjects.

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21 *See, e.g.,* NCUC Tr. Vol. 7, at 241 (Ainsworth) ("That's just not part of the process for retail, and it certainly is not the process for wholesale").

22 *Id.* at 239 (Ainsworth).

23 *Id.* at 244-45 (Ainsworth). When BellSouth witness Ainsworth was asked whether he had any way of knowing how the level of the facility shortage advisories given to CLPs compared to the level of advisories given to retail customers, his admirably straightforward answer was "no." *Id.* at page 245.

24 *See, e.g.*, Cross examination of BellSouth witnesses Ainsworth and Heartley before the South Carolina Public Service Commission, July 2001, Docket 2001-209-C.

B. Installation Problems and Chronic Outages Plague BellSouth's Loops.

When BellSouth finally provides UNE loops, outage problems begin. The BellSouth loop outages are so endemic as to prevent UNE-loop competition.[25] Within 30 days of BellSouth turning up loops for KMC in Georgia, for example, 13% of the analog loops (designed) failed in January 2002. This is consistent with the overall CLEC-aggregate numbers reported by BellSouth, which indicate that 9% suffered outages within 30 days.[26]

For digital loops DS1 and above, ***four times*** as many CLEC circuits failed within 30 days of install in both December and January.[27]

KMC's experience in Louisiana is similar, with 16% of the analog loops installed in December 2001 failing within 30 days of being installed.[28]

Chronic (repeat) outages are, unfortunately, an even bigger concern. BellSouth's own reported performance indicates that over ***one-third*** of the KMC DS1 and higher loop troubles in both Georgia and Louisiana over the past eight months had a trouble in the preceding 30 days.[29] For analog loops, BellSouth's performance was better, but far from satisfactory. In

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25 KMC believes that its outage problems may be more severe than the CLEC aggregate numbers reveal since it generally competes in the Tier III cities that most other companies ignore. Although these cities are apparently also ignored by the BellSouth capital expenditure planners, they are an important component of the Commission's goals of widespread competition and broadband deployment.

26 January Monthly State Summary, metric B2.19.8.1.1.

27 Metric B.2.19.19.1.1.

28 *McLaughlin Affidavit* at 6.

29 *Id.*

January, 22% of KMC's analog loop troubles were repeats, while roughly 15% of the analog troubles in both Georgia and Louisiana over the past eight months were as well.[30]

This is not a recent problem. As noted in the *KMC GA/LA I Comments*, for the ten month period July 2000 - April 2001, the number of trouble reports on KMC circuits in Georgia that had a trouble in the preceding 30 days averaged almost 20%.[31] In Louisiana too, roughly 20% of the troubles on KMC UNE circuits during the seven month period from October 2000, through April 2001 were on lines with a prior problem.[32]

Based on its own performance data, BellSouth cannot credibly claim to be in compliance with the checklist standards for loops. In approving the Bell Atlantic-NY application, for example, the Commission stated that:

> performance data on the rate of repeat trouble reports indicates that Bell Atlantic repairs trouble for competitors at the same level of quality that it provides to itself, or better. Consistently from June through September 1999, for both resale and unbundled network elements, a lower percentage of competitors' customers reported repeat trouble within 30 days than Bell Atlantic's retail customers.[33]

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30 *Id.*

31 These KMC-specific numbers were generally consistent with the CLEC aggregate numbers reported by BellSouth. For April 2001, for example, BellSouth reported the following repeat trouble report percentages: twenty-two percent (22%) for business lines, forty-eight percent (48%) for Design, twenty-four percent (24%) for UNE Design, seventeen percent (17%) for UNE Non-Design and twenty-three (23%) for Local Trunks. *Performance Measurements for Telecommunications Interconnection, Unbundling and Resal*e, BellSouth Monthly SQM Performance Report, Docket 7892-U (Apr. 2001).

32 During that period, BellSouth reported the following repeat trouble report percentages for DS-1 circuits: April twenty-nine percent (29%), March thirty-three percent (33%), February thirty-six percent (36%), January twenty-nine percent (29%), December twenty-four percent (24%), November thirty-three percent (33%), October thirty-two percent (32%). Source: BellSouth PMAP Website (http://pmap.bellsouth.com).

33 *New York 271 Order*, at para. 224. The FCC stated that, "[I]n order to compete effectively in the local exchange market, competing carriers must be able to access maintenance and repair functions in a manner that enables them to provide service to their customers at a level

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As noted in the *KMC GA/LA I Comments*, several KMC City Directors have mandated the installation of several DS-0 back up circuits for each BellSouth DS-1, so that KMC customers are not completely out of service when the BellSouth DS-1 goes down.[34]

C. BellSouth Is Using "DSL-Blocking" to Illegally Block Access to UNE Loops.

In addition to its performance-related checklist violations, BellSouth is intentionally and illegally denying access to loops by engaging in what can best be described as "DSL blocking." Like a virus, this blatantly discriminatory tactic has mutated into several different forms.[35]

The first discriminatory method involves BellSouth placing DSL service on the primary or billing telephone line of a multi-line customer's account. These multi-line customers, in turn, almost always have a feature called hunting, that permits calls to roll over to a spare line if the primary line is busy. Since BellSouth has made a "business decision" to not offer its DSL service on UNE loops,[36] assignment of DSL to the primary line prevents CLECs from obtaining the loop and serving that end user. Without access to the primary line, the remainder of the lines on a customer's account cannot be transferred; even if they could, the secondary or roll-over lines are useless without the primary line to which all incoming calls are initially directed.[37]

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of quality that matches the quality of service that Bell Atlantic provides its own customers." *Id.* at para. 222, *citing Application of BellSouth Corporation for Provision of In-Region, Inter-LATA Services in Louisiana*, 13 FCC Rcd 20599, 20694 (1998) ("*Second BellSouth Louisiana Order*").

34 *McLaughlin Affidavit* at 7.

35 *See, e.g.,* NCUC Tr. Vol. 10, at 391-92 (Withers) and 397-98 (Swaim).

36 NCUC Tr. Vol. 8 at 14, 17 (Williams). "[W]e're not gonna allow the data service to remain on the line if its converted over."

37 *Id.* at page 16.

BellSouth therefore is using a customer's decision to obtain DSL service to *physically* foreclose competitors' ability to provide voice service to that customer. This policy blocks access to well over half a million customers,[38] while its goal of obtaining 1.1 million DSL end users in 2002[39] will significantly exacerbate this problem.

While BellSouth claims that it has a policy to install the DSL service on whichever line the end user requests, its testimony reveals that policy in fact may be illusory since it is far from clear what script its service representatives are supposed to follow.[40] Most significantly, however, it is clear that BellSouth does not explain to customers that they will be prevented from enjoying the benefits of competition if DSL is placed on their primary line.[41] BellSouth's second discriminatory tactic involves customers who have already made the switch to a competitor. When BellSouth sells DSL service to a CLEC end user customer, it will transfer back to itself a voice line as well. The voice line that it transfers, however, almost always will be that customer's *primary* line.[42] Once BellSouth effects this primary line transfer, the CLEC is left with nothing but useless secondary lines.[43] Since BellSouth could easily engage in line

38 BellSouth press release (Jan. 3, 2002) ("BellSouth Corp. (NYSE: BLS) today announced that it has *nearly tripled its DSL customer base* with 620,500 customers in 63 total markets. This marks an increase of 405,500 customers in 2001, which represents a growth rate of 188%, the highest of any DSL or cable provider in the country. The success of this initiative is largely due to BellSouth's focus on customer service and its execution of the *most aggressive DSL deployment strategy in the industry*, increasing the company's potential customer base from 45% to 70% of households in the markets that BellSouth serves.") (*emphasis added*).

39 *Id.*

40 NCUC Tr. Vol. 8 at 18.

41 *Id.* Few customers are likely to fully comprehend the difference is between a primary and a secondary line.

42 NCUC Tr. Vol. 10, at 391-92 (Withers) and 397-98 (Swaim).

43 NCUC Tr. Vol. 10 at 391-92 (Withers) and 397-98 (Swaim)

splitting, or transfer a secondary line, this primary line transfer is completely unnecessary[44] and has no legitimate objective.[45]

Another creative BellSouth tactic is its refusal to provide DSL service on the same line over which an end user subscribes to a CLEC's voice service. That is, an end user customer cannot utilize a CLEC for voice service and receive BellSouth's DSL service over the same line, but instead must either purchase a CLEC's voice service on one line and purchase a separate second line for BellSouth's DSL service, or take BellSouth's voice service and BellSouth's DSL service on the same line. In August 2001, the Louisiana Public Service Commission Staff found this conduct "rather disturbing" and recommended that BellSouth be ordered to provide its DSL service directly to the end user via the same UNE loop that the CLEC is utilizing to provide voice service to the end user.[46] Accordingly, the Louisiana Public Service

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44 *See* NCUC Tr. Vol. 8, at 17 (Williams).

45 Although BellSouth claims that "KMC should not blame BellSouth if end-users request BellSouth to provide ADSL on the primary number," (Tr. Vol. 8, at 468 (Page 29 of Williams' Pre-filed Rebuttal) BellSouth certainly should be faulted if it is transferring primary lines to itself and assigning DSL service to those lines without first obtaining an informed consent from the customer. As one State Commission that eventually found checklist compliance appropriately stated, "[d]uring the transition to local competition, practices that tend to diminish customers' choices or hinder market entry by competitors will be carefully scrutinized." *Petition of MCI Telecommunications for a Declaratory Ruling Regarding Availability of New York Telephone Toll Services to Competitive Local Exchange Company Customers*, New York PSC Case 98-C-0799, Declaratory Ruling, at 9 (Dec. 7, 1998).

46 Louisiana Public Service Commission, ex parte, *Consideration and review of BellSouth Telecommunications, Inc.'s preapplication compliance with Section 271 of the Telecommunications Act of 1996 and provide a recommendation to the Federal Communications Commission regarding BellSouth Telecommunications, Inc.'s application to provide interLATA services originating in-region,* Docket No. U-22252 (E), *Staff's Proposed Recommendation* at 86 (Aug. 31, 2001).

Commission initiated a docket to further study this practice and is presently considering comments submitted in that proceeding.[47]

More recently, KMC has become aware of another improper BellSouth tactic. BellSouth, it seems, is pre-qualifying customer lines for DSL service, and indicating such qualification with an ADSL USOC. The mere existence of that USOC, in turn, then prevents competitors from serving those customers (orders will apparently be rejected). In an even further act of discrimination, BellSouth will not even recognize the competitor's authority to remove the USOC as part of an order to switch service, despite the fact that it will permit its affiliates to do so.[48]

Since BellSouth's practices virtually eliminate customer choice and severely hinder market entry, and since there is no justification for assignment of DSL to the primary line, BellSouth should be specifically prohibited from continuing this practice. The Commission must clearly articulate a policy that will prevent BellSouth from using its newfound dominance of the DSL market to quash the fledgling competition in the voice market. In the absence of a specific, informed and memorialized customer request, BellSouth must be prohibited from assigning DSL service to the primary line of multi-line customers and from transferring back to itself an CLEC customer's primary line in response to a request for DSL service from the end user.[49] This

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47 *In re: BellSouth's Provision of ADSL Service to End-Users Over CLEC Loops*, Louisiana Public Service Commission, Docket No. R-26173 (Dec. 7, 2001). On January 18, 2002, several interested parties filed comments in Docket No. R-26173, including KMC, the Southeastern Competitive Carriers Association, NewSouth Communications Corp., ITC^DeltaCom Communications, Inc., ACCESS Integrated Networks, Inc. and Xspedius Corporation.

48 *See* Florida PSC Workshop Transcript, at 131-33, 135-36.

49 BellSouth witness Williams, in fact, admitted on the record in the Florida 271 proceeding that the way to avoid blocking access to customers with DSL is to "put the ADSL on another

. . . .*Continued*

policy is absolutely fair to BellSouth, as it will in no way limit BellSouth's ability to market its DSL service but will simply prevent the company from using the DSL service to block CLEC access to voice customers in violation of the checklist. While BellSouth continues this anti-competitive practice, however, it cannot be found to be in compliance with the checklist.

IV. BELLSOUTH IS ENGAGING IN ANTI-COMPETITIVE AND UNLAWFUL ACTIVITY

In addition to the illegal DSL practices cited above, BellSouth has also engaged in numerous other anticompetitive activities to prevent KMC and others from competing in its monopoly territory. Such activities include using proprietary information obtained from KMC for the purpose of BellSouth's own Winback efforts, engaging in misrepresentations, and offering non-tariffed services to CLEC-served end users. Since KMC has addressed the first two items in the *KMC GA/LA I Comments* in the prior docket,[50] only the third issue will be briefly referenced herein.

BellSouth, on more than one occasion, offered free service to win back CLEC customers in a clear violation of its tariffs.[51] Although BellSouth will likely attempt to paint these as isolated instances, they were – by BellSouth's own admission – part of a program that was administered region-wide.[52] BellSouth's illegal and anticompetitive practices must not be tolerated, and the Commission cannot grant's BellSouth's application until those practices cease.

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line. I think that's the answer." Florida Public Service Commission Docket No. 960786-TL, cross examination of BellSouth witness Thomas Williams, at Tr. Vol. 5, 713.

[50] *KMC GA/LA I Comments*, at 15-17.

[51] NCUC Tr. Vol. 2, at 281-98, and 306-08. The record demonstrates at page 287, for example, that BellSouth offered "three months free service" to a CLP customer, while BellSouth itself admitted on page 285 that "an offer of free service is contrary to the tariff."

[52] *Id.* at 273, 306-08.

V. CONCLUSION

For the foregoing reasons, KMC respectfully requests that the Commission find that BellSouth has not complied with section 271 and deny the application.

Respectfully submitted,

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